

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 145 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

NEW INDIA INDUSTRIES LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR BD KARIA & MR RK PATEL WITH MR KC PATEL for Petitioner
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 17/12/98

ORAL JUDGEMENT

1. For the assessment year 1975-76 and 1976-77, the assessee has claimed deduction of additional amounts of Rs. 2,42,093/- and Rs. 3,29,849/- respectively paid by it as a result of foreign exchange rate fluctuation as deduction under Section 37 as the expenses having been

laid or incurred wholly for the purposes of carrying on the business, for the assessment years 1975-76 and 1976-77. This claim of the assessee was ultimately refused by the Tribunal by holding the loss to be of capital nature. At the instance of assessee, following two questions have been referred to this court for its opinion arising out of Tribunal's appellate orders in ITA Nos.1441 & 1442/Ahd/81 relating to the two assessment years in question:

"1. Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the assessee was not entitled to claim a sum of Rs.2,42,093/- for A.Y.1975-76 and Rs.3,29,849/- for A.Y. 1976-77 being the amount payable on account of foreign exchange fluctuation as deduction under Section 37 of the I.T.Act, 1961 and/or Section 28(1) of the Act?

2. Whether on the facts and circumstances of the case, the Tribunal was justified in following the decision rendered by the Special Bench in the case of Poysa Industrial Co. v. ITO (1981) 7 Taxman 181 (Bom.Trib) (S.B.)?"

2. It was pointed out by both the learned counsel that the issue has been settled by decision of the Supreme Court in Sulej Cotton Mills Limited v. Commissioner of Income-tax, West Bengal 116 ITR 1 as followed by this Court in CIT v. Windsor Industries 146 CTR 207 that the loss arising out of foreign exchange rate fluctuation requiring payment of additional sum is not loss or expenditure of revenue nature but of capital nature and is not allowable as a deduction.

As a result we answer Question No.1 referred to us following the aforesaid decision in affirmative, that is to say, in favour of revenue and against the assessee.

In view of our answer to Question No.1, Question No.2 had become of academic importance and we decline to answer.

(Rajesh Balia, J)

(A.R. Dave, J)